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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1998-014086 12/07/2006

THE HONORABLE NORMAN J. DAVIS

CLERK OF THE COURT
L. Chambers
Deputy

ATLAS 000265892900
IN RE THE MATTER OF
LORIANN MAKUAKANE

BRANDY M RAMSAY

AND

RANDRICK L SOUZA

JOHN R GAERTNER JR.

DOCKET-FAMILY COURT CCC
SUPPORT SERVICES-CCC

JUDGMENT

The Court conducted an Evidentiary Hearing on Petitioner's Petition for Order to Show Cause re: Contempt for Non Payment of Child Support, Spousal Maintenance and Non Covered Medical Expenses filed July 11, 2006 and Respondent's Petition to Modify Child Support, Simplified Process, filed May 16, 2006. The issues were taken under advisement. Based upon the testimony and evidence presented at the hearing, the Court makes the following findings and orders:

CHILD SUPPORT ORDER

Father is currently employed on a full-time basis with Youth Development, Inc. He is paid a gross income of $864 every two weeks or $1,872 per month. Father is also attending school full-time and receives approximately $10,000 per year in financial aid that is not subject to repayment. This financial aid is properly included as "gross income" under paragraph 5(A) of the Arizona Child Support Guidelines. Father has a second job which he earns a modest sum of approximately $500 per year, which the Court will not include in his gross income pursuant to Paragraph 5(A) of the Arizona Child Support Guidelines. His income is in the nature of a second job which would not properly be included to increase Father's income for child support purposes. Prior to October 2005,

Father was employed in Zuni, New Mexico on a full-time basis. In calendar year 2004, he had a gross annual income of $53,052. In 2005, he was on track to meet or exceed that amount before he resigned from this employment in October 2005 to attend school full-time and pursue a Master's Degree in Albuquerque, New Mexico. For a time, Father attempted to balance a 3 hour commute to work full-time in Zuni and to attend school in Albuquerque but found the rigors of this schedule too demanding and determined that he needed to devote himself to school and being employed in Albuquerque. Mother argues that Father reduced his earnings as a matter of choice and not for reasonable cause such that the Court should attribute his previous earnings to him for child support calculation purposes.

After considering all of the factors in Paragraph 5(E) of the Arizona Child Support Guidelines and all of the factors set forth in Little v. Little, 193 Ariz. 518, 975 P.2d 108 (App.1999),

THE COURT FINDS that Father's voluntary decision to terminate employment and return to school while working full-time was reasonable under all of the circumstances. Father previously had earned a Bachelor's Degree and his desire to earn a Master's Degree in Social Work is reasonable. His move to Albuquerque to enroll in school was made in good faith to further this goal. While Father's asserts that additional education was required as a result of an audit with his previous employer, the Court will not make such finings as Father has failed to provide written documentation after numerous discovery requests to support that claim. Credible evidence does indicate that completion of his Master's Degree will improve his long-term employability and income potential in the market place. He has continued to be employed full-time which has the net result of not drastically reducing his monthly income. All future employment prospects are always speculative, but it does appear that his additional education will allow him to be employed in jobs earning some increased income. Further, Father will graduate with a Master's Degree this coming spring in May of 2007. This short duration of schooling will limit the detrimental impact upon the children and at least allow benefit to the younger child. Although Father has become delinquent in his child support obligation since making this decision, it appears that he made the decision in good faith and not to avoid his child support obligation. The Court will establish Father's income at $2,705 per month, representing his gross monthly income from employment of $1,872 and $833 of monthly financial aid.

Mother's income is undisputed at $3,033.33 per month of gross monthly income.

Both parties request that they provide medical insurance for the children through their insurance carrier. Mother has had significant problems accessing and obtaining coverage for the children under Father's policy in the past, primarily due to Father and the insurance company being located in New Mexico. It also appears that some of Mother's difficulties have arisen from Father's failure to designate an Arizona physician as the primary care provider. The advantage of Father's

policy is that he can cover the children for approximately $76 per month compared to a monthly amount of $213.99 under Mother's policy. Because of the extreme difference in costs,

THE COURT FINDS it appropriate to allow Father to continue to provide coverage, provided he fully cooperates with Mother to obtain coverage and prompt payment of claims. If current coverage problems persist, it may be necessary for the Court to change the coverage in a future modification proceeding.

It is undisputed that Father has not exercised any parenting time with the children in the last two years. Mother asserts that he has not requested any such time and Father alleges that Mother has prevented access. The Court frankly finds some merit to both allegations. Father certainly has not been persistent in seeking or exercising visitation. He has not made any written requests to visit and has not provided timely notice to Mother of his intent to visit the children. On the other hand, Mother exhibits reluctance to allow visitation while professing a willingness to permit access. Her testimony was to the effect that she would allow visits if it did not interfere with the children and her arranging for a police officer to be present in the past for a simple exchange without demonstrated need, indicates at least a reluctance to encourage parenting time with Father. It is yet to be determined whether either parent will alter these behaviors. For the present,

THE COURT FINDS it appropriate to include a parenting time adjustment of 20 days for child support calculation purposes.

THE COURT FURTHER FINDS that the relevant financial factors required to be included, and the discretionary allowances and adjustments which the Court will allow, for a current calculation of child support pursuant to the Arizona Child Support Guidelines are as set forth in the Child Support Worksheet attached hereto and incorporated herein by reference.

THE COURT FURTHER FINDS that there is a substantial and continuing change of circumstances warranting modification of the child support order in this case.

THE COURT FURTHER FINDS that a strict application of the child support guidelines in this case is inappropriate or unjust and that the Court has considered the best interests of the children in determining that a deviation of $90.41 per month from the amount determined under the guidelines is appropriate to reduce Father's child support obligation to $450 per month. In support of this deviation, the Court notes that Father's financial aid income of $833 per month is only partly available for living expenses. Approximately half of this sum must be utilized for college expenses. Further, Father's reduce financial circumstances existed for some months prior to the actual filing of this Petition and for a period of approximately three years, Father contributed directly to the support of the parties' oldest child. The oldest child is now emancipated but resided with Father for at least parts of approximately three years prior to emancipation. The application of Father's financial aid

to college expenses would alone be sufficient for the deviation, but considering all of these factors, a modest reduction is appropriate, to allow Father complete school.

IT IS ORDERED modifying the child support order in this case. Father shall pay to Mother as and for child support the sum of $450 per month, payable through the Support Payment Clearinghouse, P.O. Box 52107, Phoenix, Arizona, 85072-2107, effective June 1, 2006, pursuant to an Automatic Wage Assignment.

FILED: Order of Assignment.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Father shall make full and timely payments directly to the Clearinghouse in accordance with the "Instructions for Making Support Payments Through the Clearinghouse" attached hereto.

MEDICAL & DENTAL

IT IS FURTHER ORDERED that Father shall provide medical insurance for the benefit of the parties' minor children. All medical, dental and vision expenses of the children not covered by insurance shall be paid **50% by Father** and **50% by Mother**.

TAX EXEMPTIONS

IT IS FURTHER ORDERED that the federal tax exemptions applicable to the parties' children shall be divided between the parties as follows:

IT IS FURTHER ORDERED that Father shall be entitled to utilize the federal tax exemptions for the parties' two minor children for all federal and state income tax purposes in odd-numbered calendar years, commencing 2007 and continuing in a like manner thereafter provided he is current in the payment of all current child support and child support arrearage payments due by December 31 of the year applicable to the exemption. If these conditions are met, Mother shall execute the necessary IRS forms to transfer the exemptions to Father. If not, Mother shall be entitled to claim the exemptions.

IT IS FURTHER ORDERED that in addition to any exemptions which Father is not eligible to utilize as set forth above, Mother is entitled to utilize the exemptions for the both children in even-numbered calendar years, commencing 2006 and continuing in a like manner thereafter.

CHILD SUPPORT ARREARAGES

Both parties are in agreement that the existing order of child support would result in an arrearage judgment of $8,902.71 in principal arrearages and additional interest in the amount of $512.16 through October 31, 2006. Because the Court has modified Father's child support obligation effective June 1, 2006, he is entitled to credit on this amount of $278 per month for the five month period commencing June 1, 2006 and ending October 31, 2006. This sum of $1,390 (5 X $278) reduces the principal arrearage owed by Father to $7,512.71 and reduces the accumulated interest through October 31, 2006 to approximately $490.

The parties further agree that Father is in arrears in his spousal maintenance obligation in the principal sum of $2,808.63 and accumulated interest of $1,426.96 through October 31, 2006 for a total amount of $4,235.59.

THE COURT FINDS that Respondent:

1. Was ordered to pay support pursuant to a valid order of support previously filed in this action;

2. Was served with the order of support or otherwise had knowledge of the order at the time it was made;

3. Is in arrears in the payment of support in the sum of **$8,002.71 for child support and $4,235.59 for spousal maintenance** through **October 31, 2006.**

4. Had the ability to pay all or a substantial amount of the support as the same became due, but has willfully failed and refused to pay. Accordingly,

IT IS ORDERED entering Judgment in favor of Petitioner/Mother, Loriann Makuakane, against Respondent/Father, Randrick L. Souza, in the principal sum of $7,512.71 plus accumulated interest of $490 for a total Judgment of $8,002.71 through October 31, 2006. Said Judgment consolidates all previous judgments for support.

IT IS FURTHER ORDERED granting additional Judgment in favor of Petitioner/Mother, Loriann Makuakane, against Respondent/Father, Randrick L. Souza, in the principal sum of $2,808.63 plus accumulated interest of $1,426.96 for a total Judgment of $4,235.59 through October 31, 2006. Said Judgment consolidates all previous judgments for spousal maintenance.

IT IS FURTHER ORDERED that Respondent/Father is found in contempt of court for failure to pay support. As a sanction,

IT IS FURTHER ORDERED that Respondent/Father has until **June 30, 2007** to purge the contempt by cash payment of **$10,000** to the Clerk of the Superior Court. **If Respondent/Father fails to pay said sum by that date, he shall report to this Division by 3:00 p.m. on July 2, 2007, and pick up the necessary paperwork to self-surrender at the Maricopa County Jail.**

IT IS FURTHER ORDERED that should Respondent/Father not pay the purge amount or self-surrender as ordered above, a Child Support Arrest Warrant shall issue for the arrest of Respondent/Father, Randrick L. Souza. Upon arrest, Respondent/Father, Randrick L. Souza shall be incarcerated in the Maricopa County Jail for an indefinite period of time until he shall have paid the sum of **$10,000** cash through the Clerk of the Superior Court or by deposit with the Sheriff, at which time he shall be conditionally released from custody. Any purge payment paid to the Clerk or the Sheriff shall be applied to the child support and/or arrearages established herein, and the Sheriff shall transmit all such sums to the Clerk as soon as possible.

MEDICAL EXPENSES

Petitioner makes further claim for uninsured medical expenses incurred for the children as well as medical insurance premiums she was required to pay when Father did not have coverage. Father acknowledges that the sum of $1,069.95 is due to Mother for the time he failed to maintain medical insurance coverage. Father's defense to uninsured medical bills is they are largely comprised of dental and vision expenses which he asserts are not covered under the parties' agreement and the Court order to pay "medical" bills.

Paragraph 9(A) of the Arizona Child Support Guidelines provides that each parent pay for any "medical, dental and/or vision costs of the children which are not covered by insurance."

This Paragraph further provides that "medical" means "necessary medical, dental and/or vision care as defined by Internal Revenue Service Publication 502." All of the expenses claimed by Mother are prescribed by the Guideline's definition and IRS Publication 502. Mother incurred uninsured medical, dental and vision expenses for the children of $3,746.59 through August 2006. Father's obligation towards this sum is 60%, pursuant to this Court's previous order, or $2,247.95.

IT IS FURTHER ORDERED granting additional Judgment in favor of Petitioner/Mother, Loriann Makuakane, against Respondent/Father, Randrick L. Souza, in the sum of $2,247.95 as and for uninsured medical, dental and vision expenses for the children through August 31, 2006.

IT IS FURTHER ORDERED that in addition to the current monthly child support amount ordered herein, Father shall pay to Mother the additional sum of $150 per month toward the

arrearages and judgments entered herein and in addition to the purge amount, each and every month commencing January 1, 2007 until the arrearages are fully satisfied.

ATTORNEY'S FEES

The Court has considered the financial resources of both parties and the reasonableness of the positions each party has taken throughout this proceeding pursuant to A.R.S. §25-324.

IT IS ORDERED awarding Petitioner/Mother, Loriann Makuakane, reasonable attorney's fees in this action of $750. Respondent/Father, Randrick L. Souza, shall pay said fees directly to Petitioner/Mother or her attorney on or before December 31, 2007.

FILED: Child Support Worksheet prepared by the Court; Exhibit Worksheet.

IT IS FURTHER ORDERED signing this minute entry as a formal Order and Judgment of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DONE IN OPEN COURT this date: _____

/S/ NORMAN J. DAVIS
_____
Hon. Norman J. Davis
Judge of the Superior Court

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: http://www.superiorcourt.maricopa.gov/ssc/sschome.html.

Attachments:

JOHN R GAERTNER JR.: Current Employer Information, CCB-NW Non IV-D Payment Instructions